

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0192P
Assessment of Penalty

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d), 45 IAC 15-11-2.

The taxpayer protests the assessment and imposition of penalty.

STATEMENT OF FACTS

Taxpayer was audited and was assessed additional taxes, as well as interest and penalty due. Taxpayer paid the tax and interest, but protested the assessment and imposition of penalty.

I. **Tax Administration** – Penalty

DISCUSSION

IC 6-8.1-10-2.1(d), **Liability for penalty**, states:

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

45 IAC 15-11-2(b) states:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Having reviewed the file and the reasons for the underpayment stated by the Taxpayer, the Department finds that under the circumstances described, Taxpayer was not negligent, as described within the regulation and statute. Taxpayer's actions were to due to reasonable cause and not due to willful neglect

FINDING

The taxpayer's penalty protest is sustained.

AG/DK 061408